

REMARKS

This submission is in response to the non-final Office Action mailed November 19, 2007.

I. Claim Status

Claims 1 and 34 have been amended to include compound octoxyglycerin. Support for this amendment is found in paragraphs 29-31 of the published application. Claims 7-13, 19-20 have been amended to reflect the elected species from the response dated November 2, 2007. Claim 8 has been further amended to replace the trademark name Glucam P-20 with its common nomenclature, which is PPG-20 methyl glucose ether. Support for this amendment is inherently found in the specification with reference to Glucam P-20, and is readily known by one skilled in the art to be the common nomenclature for Glucam P-20. See Tab A for further support. Claim 9 has been further amended to replace the trademark name Incroquat Behenyl TMS-50 with its common nomenclature, which is a composition containing the following three ingredients: behentrimonium methosulfate, cetyl alcohol, and butylene glycol. Support for this amendment is inherently found in the specification with reference to Incroquat Behenyl TMS-50, and is readily known by one skilled in the art to be the common nomenclature for Incroquat Behenyl TMS-50. See Tab B for further support. Claims 14-15, 17-18, 21, and 23-32 stand withdrawn as nonelected species. Therefore, claims 1-13, 16, 19, 20, 22, 33, and 34 are currently pending.

No new matter has been introduced by way of this amendment. Reconsideration is respectfully requested.

II. Double Patenting

Claims 1,2, 3, 5-10, 12, 13, 16, 19, 20, and 22 stand provisionally rejected for nonstatutory obviousness-type double patenting over claims 1, 3-11, and 17 of co-pending application serial no. 10/622,272. According to the Examiner, it would have been obvious to combine the optional ingredients noted in the '272 application to arrive at the presently claimed invention.

Since the rejection is provisional because the allegedly overlapping claims have not yet been patented, to the extent that claim scope overlaps in any patented case, Applicants will agree to submit a terminal disclaimer at such necessary time.

III. Rejections Under 35 U.S.C. § 112, ¶2

Claims 8-9 stand rejected as indefinite for containing trademark/tradenames of the emollient Glucam P20 and emulsifer Incroquat Behenyl TMS-50. According to the Examiner, the trademarks do not identify the particular material, but rather only identify the source of goods.

In response, applicants have amended claims 8 and 9 to reflect the compound name in place of the trademark name. Claim 8 has been amended to replace the trademark name Glucam P-20 with its common nomenclature, which is PPG-20 methyl glucose ether. Claim 9 has been amended to replace the trademark name Incroquat Behenyl TMS-50 with its common nomenclature, which is a composition containing the following three ingredients: behentrimonium methosulfate, cetyl alcohol, and butylene glycol. Support for these amendments is inherently found in the specification with reference to each of the trademark names. Furthermore, one skilled in the art would readily recognize the common nomenclature of the trademark names. See Tabs A and B for further support.

Applicants submit that this rejection has been overcome and respectfully request that the rejection be withdrawn.

IV. Rejections Under 35 U.S.C. § 102(a)

Claims 1, 5, 19, and 20 stand rejected as anticipated by U.S. Patent No. 4,478,853 (to Chaussee). According to the Examiner, Chaussee teaches a composition containing ethanol, dimethicone, cyclomethicone, carbopal 940, glycerol, water, triethanolamine, and other components, including emulsifiers, and topical antiseptics such as benzalkonium chloride. Applicants traverse the rejection and request reconsideration.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicants note that claim 1, as amended, includes the component octoxyglycerin. Chaussee fails to teach or disclose octoxyglycerin (glycerol 1-(2-ethylhexyl) ether). Therefore, Chaussee fails to anticipate the presently claimed invention. Accordingly, applicants request the rejection be withdrawn.

V. Rejections Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1, 6-8, 19, 20, 22, 33, and 34 as unpatentable over U.S. Patent no. 5,110,809 (to Wang et al.). The Examiner states that Wang teaches all ingredients of the claimed invention, with the exception of concentrations, hydroxyethyl cellulose as the hydrogel, and Glucam P-20 as the emollient. According to the Examiner, it would have been obvious to one skilled in the art, based on the teaching of Wang, to arrive at the claimed invention by adjusting concentrations and by using gelling and emollient agents. Applicants traverse the rejection and request reconsideration.

Applicants respectfully submit that a *prima facie* case of obviousness has not been established. According to the October 10, 2007 guidelines regarding the Supreme Court decision on *KSR International, Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007), from the USPTO, Examiners must make the underlying factual inquiries required by the leading Supreme Court case of *Graham v. John Deere Co.*: i.e., to (1) determine the scope and content of the prior art; (2) ascertain the differences between the claimed invention and the prior art; and (3) resolve the level of ordinary skill in the art. (The guidelines are available at <http://www.uspto.gov/web/offices/com/sol/notices/72fr57526.pdf>). Evidence of secondary considerations of non-obviousness is also to be considered by the PTO. In accordance with *KSR*, the guidelines point out that the source of “knowledge and ability” used in making an obviousness inquiry is not limited to just “documentary prior art”, but can include “general knowledge in the art, or common sense.”

Applicants submit that evidence concerning secondary considerations have not been provided. Specifically, the Examiner has failed to provide some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill in the art to arrive at the claimed invention. Rather, it would not be obvious to one skilled in the art to select the specific compounds claimed in their noted concentrations based on the teachings in Wang. The claims, as presently amended, require the presence of octoxyglycerin. Wang fails to teach the presence of this compound and fails to suggest that it should be used. The present specification notes that octoxyglycerin has antimicrobial activity, is a mild humectant, and a skin emollient. In contrast, Wang states that “Cream formulations often necessitate the use of emulsifiers or surfactants to

maintain their physical stability and the use of antimicrobial preservatives to prevent microbiological contamination. These additives tend to generate an undesirable environment which can accelerate the hydrolysis of 17-ester steroids and the physical separation due to the salting out.” See ‘809 patent, col. 3: lines 18-24. Wang also states that “It was another object of the invention to provide topical gel formulations of mid-potency 17-ester steroids and imidazole antifungal agents which possess good dispersibility and good physical and chemical stability without refrigeration and without the need for special additives such as emulsifiers or surfactants or antimicrobial preservatives.” See ‘809 patent, 5:3-9. Therefore, Wang teaches away from the use of any compound that would have antimicrobial activity. Thus, Wang cannot render the claimed invention obvious. Accordingly, applicants request the rejection be withdrawn.

The Examiner has rejected claims 1, 2, 3, 6, 13, 16, 19, and 20 as unpatentable over U.S. Patent no. 4,478,853 (to Chaussee). The Examiner states that Chaussee does not anticipate a composition comprising 0.1 to 1.0% silicone polymer or use of benzalkonium chloride, but that Chaussee makes such a composition obvious. The Examiner states that Chaussee teaches concentrations as low as 1%, which is within the claimed range, and that Chaussee teaches that a benzalkonium chloride composition could be added to the composition. Applicants traverse the rejection and request reconsideration.

Applicants respectfully submit that the claimed invention is not obvious over the art. Applicants respectfully submit that a *prima facie* case of obviousness has not been established. Applicants submit that it would not be obvious to one skilled in the art to select the specific compounds claimed in their noted concentrations based on the teachings in Chaussee. As noted above, the presently claimed invention as amended requires the presence of octoxyglycerin, which is not taught or suggested by Chaussee, either specifically or generally. Chaussee does not teach the use of a compound having the properties of octoxyglycerin. Therefore, for at least this basis, Chaussee cannot render the claimed invention obvious. Accordingly, applicants request the rejection be withdrawn.

The Examiner has rejected claim 9 as unpatentable over Chaussee in view of U.S. Patent no. 5,804,203 (to Hahn et al.). The Examiner relies on Chaussee for the teachings disclosed above. The Examiner relies on Hahn for a teaching of a strontium compound and Incroquat Behenyl TMS. According to the Examiner, one skilled in the art would have combined the

teachings of Chaussee and Hahn to arrive at the claimed invention. Applicants traverse the rejection and request reconsideration.

Applicants respectfully submit that the claimed invention is not obvious over the art. Applicants respectfully submit that a *prima facie* case of obviousness has not been established. Applicants submit that it would not be obvious to one skilled in the art to select the specific compounds claimed in their noted concentrations based on the teachings in Chaussee in view of Hahn. For the reasons noted above, Chaussee fails to render obvious the claimed invention. Taken in view further view of Hahn does not readily provide one skilled in the art the necessary teachings to arrive at the claimed invention. Hahn also fails to teach the inclusion of the compound octoxyglycerin and fails to teach or suggest any compound having the same properties of octoxyglycerin as noted above. Therefore, for at least this basis, Chaussee in view of Hahn cannot render the claimed invention obvious. Accordingly, applicants request the rejection be withdrawn.

The Examiner has rejected claim 10 as unpatentable over Chaussee in view of U.S. Patent no. 5,599,549 (to Wivell et al.). The Examiner relies on Chaussee for the teachings disclosed above. The Examiner relies on Wivell to provide a teaching of compositions having silicones. Therefore, the Examiner concludes that one skilled in the art would have been motivated combine the teachings of Chaussee and Wivell to arrive at the claimed invention. Applicants traverse the rejection and request reconsideration.

Applicants respectfully submit that the claimed invention is not obvious over the art. Applicants respectfully submit that a *prima facie* case of obviousness has not been established. Applicants submit that it would not be obvious to one skilled in the art to select the specific compounds claimed in their noted concentrations based on the teachings in Chaussee in view of Wivell. For the reasons noted above, Chaussee fails to render obvious the claimed invention. Taken in view further view of Wivell, one skilled in the art could not arrive at claimed invention since neither reference teaches or suggests the use of the compound octoxyglycerin, nor the inclusion of a similar compound with similar properties. Therefore, for at least this basis, Chaussee in view of Wivell cannot render the claimed invention obvious. Accordingly, applicants request the rejection be withdrawn.

VI. Conclusion

In view of the above amendments and remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue. If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below. Applicants believe no fee is due at this time. However, if any fees are required, the Commissioner is authorized to charge such fee to Deposit Account No. 02-4377.

Dated: February 19, 2008

Respectfully submitted,
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TAB A

Glucam™ P-20

INCI Description PPG-20 Methyl Glucose Ether

General Information Glucam P-20 is an extremely effective fragrance fixative and humectant for hair care and skin care products. Glucam P-20 also provides the following characteristics to formulations:

- Miscible with water, alcohols, organic esters and oils
- Lubricious, emollient feel
- Reduces stinging of alcohol
- Glossing aid
- Freezing point depressant

Physical & Chemical Properties	Appearance:	Pale yellow moderate viscosity syrup
	Odor:	Mild
	Acid number, mg/g:	1 max
	Hydroxyl value, mg/g:	160-180
	Moisture, % wt.:	1 max
	Saponification value, mg/g:	1.5 max
	Iodine value:	1 max
	Ash, % wt.:	0.5 max
	Color, Gardner	1 max

Packaging Glucam P-20 is packed in 215-kg drums or 45-kg and 16-kg pails. Material should be stored on pallets in closed areas.

Product Code: 81-0023
Revision Date: 12-08-03



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14 February 2008

Product Name	Glucam P20 Distearate
INCI/Chemical Name	PPG-20 Methyl Glucose
Segment(s)	Cosmeceutical Baby Rinse Off Hair Removal Baby Leave On Leave On Skin Sun Protection After Sun Baby Sun Care Rinse Off Skin Self Tan Miscellaneous Sun Wipes Anti-Perspirant & Deodorant Miscellaneous Skin
Product Function	Emollient, moisturiser
Supplier	NOVEON

Document Downloads

File Type	Size	Name	Type
0K		GLUCAM P20 DISTEARATE	SDS
73K		GLUCAM P20 DISTEARATE	SPEC



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TAB B

Perfumery**Scales****Shrink Wrap****Ordering****Information****Recipes****Calculators****Mail Lists****About**

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information on
our 2008 Schedule.

or wind burned skin or lips, cold sores, fever blisters and diaper rash, but considers such explicit claims as drug claims.

When Allantoin is added to a personal care product and no claim are made the product remains a cosmetic. Want our advice? Remain a cosmetic!

514-2402	1 oz Allantoin	\$2.34
514-2404	4 oz Allantoin	\$6.25
514-2405	8 oz Allantoin	\$10.55
514-2406	16 oz Allantoin	\$17.44
514-2407	5 lbs Allantoin	\$72.15

Citric Acid

Recipes
MSDS

INCI = Citric Acid

Citric acid is a must when making fizzing bath crystals. There is nothing more relaxing than getting ready for bath with an effervescent bath powder releasing a relaxing scent into the air. If you aren't sure how to make this simple bath salt mix then follow the recipe link for assistance and success. You'll love the results!

502-2306	1 lb Citric Acid	\$2.00
502-2307	5 lbs Citric Acid	\$9.00
502-2308	10 lbs Citric Acid	\$17.00
502-2309	25 lbs Citric Acid	\$40.00

Majestic Mountain Sage

918 West 700 North Ste
104
Logan, Utah 84321

Business Hours:

Monday - Friday
8:00 am - 4:00 pm
Mountain Time

Conditioning Emulsifier

Recipes

INCI: Behentrimonium Methosulfate (and) Cetyl Alcohol (and) Butylene Glycol

Small pastills of 50% active behenyl quaternary conditioning agent and cationic emulsifier. So you want to know what this means for the hobby toiletries maker? Well... The pastilles are easy to use, the emulsifier has conditioning properties, excellent for hair and skin, emulsifies silicones, leaves a soft powdery feel exceptionally mild and non irritating.

For lotions and similar products use 1 to 5%, for hair conditioners use 1 to 10%. We generally use about 3% in lotions and find the results fabulous. This is a replacement for emulsifying wax in our

recipes.

Also called Incroquat Behenyl TMS-50.

502-5005	8 oz wt Conditioning Emulsifier	\$5.50
502-5006	16 oz wt Conditioning Emulsifier	\$10.50
502-5007	5 lbs Conditioning Emulsifier	\$43.00
502-5008	10 lbs Conditioning Emulsifier	\$75.00
502-5009	25 lbs Conditioning Emulsifier	\$153.00

Cyclomethicone



Recipes
MSDS

INCI: Cyclomethicone OR Cyclopentasiloxane

MMS continues to work hard for our customers and cyclomethicone is the perfect example. There are a ton of cyclomethicone varieties available and MMS has chosen one, specifically cyclopentasiloxane, as the variety that will best suit our customers.

Cyclopentasiloxane has a higher flash point so you can ship your room sprays or perfumes on an airplane without worry. Other vendors sell a cyclomethicone that can't even ship to you via airplane! Be wary, your safety, and the safety of others, is very important. For your reference the flash point is 170 degrees F.

Cyclopentasiloxane is the perfect balance between volatility (quick drying) and spreadability. We think it is great for hair treatments, bath oils, creams and lotions, room/linen sprays, and more. Cyclopentasiloxane adds a soft, talc-like feel and is the base for superb dry perfume oils.

INCI labeling allows for the use of either name so please use the name most suited to your product and customer base.

This cyclomethicone is also known as Cyclomethicone NF.

Enjoy!

1 gallon weighs approximately 7.8 lbs

515-3943	16 fl oz Cyclomethicone	\$7.50
515-3944	1 Gallon Cyclomethicone	\$52.00
515-		

CRODAMOL STS Cream with INCROQUAT BEHENYL TMS-50
SC-328

This formula demonstrates the great silicone-like feel properties of CRODAMOL STS. There is a slight sense of wetness on application which promotes easy spreading on the skin and prolongs the playtime. After being applied, the CRODAMOL STS cream imparts a rich, moisturized feel that is pleasing on the skin. The formula leaves a non-shiny finish and, with the addition of appropriate actives, is ideal for anti-aging products. The cream itself has a smooth, thick texture and a creamy consistency.

INGREDIENTS
%
PART A

Deionized Water	63.00
Propylene Glycol	5.00

PART B

CRODAMOL STS (PPG-3 Benzyl Ether Myristate)	25.00
INCROQUAT BEHENYL TMS-50 (Behentrimonium Methosulfate (and) Cetyl Alcohol (and) Butylene Glycol)	4.00
CRODACOL C-70 (Cetyl Alcohol)	2.00

PART C

Propylene Glycol and Diazolidinyl Urea (and) Propyl Paraben (and) Methyl Paraben (1)	1.00
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PROCEDURE

Combine Part A and Part B ingredients separately with mixing and heat each to 80°C. Add Part A to Part B with mixing, maintaining temperature at 80°C for 10 minutes. Remove heat and continue mixing until batch cools to 40°C. Add Part C and cool to room temperature. Adjust pH to 5.50 with TEA.

Viscosity: 42,000 cps \pm 10% (RVT Spindle TC @ 10 RPM @ room temperature); pH: 5.50 \pm 0.50

1) Germaben II (ISP/Van Dyke)